IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4742 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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NEW INDIA ASSURANCE COMPANY LIMITED - Appellant
Versus
SHANKARBHAI MADHUJI PRAJAPATI AND OTHERS - Defendants

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Appearance :
MR PV NANAVATI for the Appellant.
NOTICE SERVED for Defendants : 4 - 5.
MR JB DASTOOR for Defendants : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. Being aggrieved by and dissatisfied with the judgment and award passed in Motor Accident Claims Petition No. 1088 of 1999 by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad on 22-06-2001, the appellant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The short facts giving rise to the present appeal are as under:

The respondent Nos. 1 to 2 (original claimants) are the heirs of deceased Harshaben Shankarbhai Prajapati who met with an accident on 20-10-1999 when she was travelling in an auto-rickshaw bearing No. GJ-2-U-2390. The auto-rickshaw collided with the jeep bearing No. GJ-2-X-2184 nearing Adalaj over-bridge. The deceased sustained serious injuries in the accident and she was immediately taken to the Gandhinagar Civil Hospital where she succumbed to

injuries. Therefore, the claimants preferred the Claim Petition against the appellant – Insurance Company and others, claiming compensation of Rs. 30 Lakhs with costs and interest at the rate of 18% from the date of the Claim Petition till realization.

The claimants adduced oral evidence and also placed reliance on documentary evidence. On the basis of the evidence adduced by the claimants, the Claims Tribunal partly allowed the Claim Petition and awarded Rs. 19.55 Lakhs to the claimants and held that the original opponent Nos. 1 and 2 were jointly and severally liable to pay the compensation with interest at the rate of 10% per annum.

3. Mr. P. V. Nanavati, learned Advocate appearing on behalf of the appellant – Insurance Company, submitted that the judgment and award passed by the learned Tribunal, awarding a sum of Rs. 19.55 Lakhs, is on the higher side and exaggerated. The learned Tribunal committed error in holding that the driver of the jeep bearing No. GJ-2-X-2194 was solely responsible for the accident. The learned Tribunal

committed error in appreciating the evidence of the income of the deceased Harshaben in proper perspective. The husband of the deceased has deposed in his testimony that the his wife was a Labour Contractor and used to earn Rs. 30,000/- per month. The cross-examination of Shankarbhai Prajapati was not appreciated by the learned Tribunal in the proper perspective. The Tribunal has computed the income of the deceased in an erroneous manner by ignoring the evidence on record of the case. The learned Tribunal ought to have taken into consideration the return filed by the deceased about her income with the Income Tax Department and other documentary evidence in computing her monthly income. The learned Advocate further submitted that the learned Tribunal wrongly applied the multiple of 16 years for the purpose of calculating the dependency benefit to the claimants. Thus, the learned Advocate submitted that the award passed by the learned Tribunal to the tune of Rs. 19.55 Lakhs is highly exaggerated and it requires to be sliced down to Rs. 3.23 Lakhs as per the calculation submitted on behalf of the Insurance-Company. The learned Advocate, in support of the

aforesaid submitted submissions, relied upon the documentary evidence and the oral evidence adduced by the respective parties. The learned Advocate submitted that income of the deceased is required to be considered as Rs. 3,000/- per month. From the aforesaid income, an amount of Rs. 1,500/- per month is required to be deducted towards the personal expenses of the deceased. If personal expenses of the deceased is deducted to the extent of Rs. 1,500/, then it would come to Rs. 1,500/- per month. The said figure can safely be considered as loss of dependency to the claimants and it would come to Rs. 18,000/- per annum. Considering the age of the deceased, the multiple of 16 may be pressed into service. If the multiple of 16 is applied to the yearly loss of dependency, then the same would come to Rs. 2.88 Lakhs. The same can be awarded to the claimants towards the loss of dependency. Further, an amount of Rs. 15,000/- be also awarded to the claimants towards the loss of estate, and as the husband lost the income of wife, the loss of consortium to the extent of Rs. 15,000/- be awarded to the husband of the victim. The learned Advocate

submitted that obsequies expenses to the tune of Rs. 5,000/- be also awarded to the claimants. Thus, taking into consideration the various heads mentioned hereinabove, the claimants would in all be entitled to claim Rs. 3.23 Lakhs towards the compensation with 9% interest from the date of the petition till realization and the rest of the claim of the claimants be dismissed.

4. Mr. J. B. Dastoor, learned Advocate representing the original claimants, submitted that the two vehicles – jeep bearing No. GJ-2-X-2184 and rickshaw bearing No. GJ-2U-2390 collided on the Adalaj over-bridge. The deceased, who was travelling in the auto-rickshaw, sustained injuries. She was immediately taken to the Civil Hospital at Gandhinagar where she succumbed to her injuries. The learned Advocate submitted that the driver of the jeep was solely responsible for the cause of the accident. The learned Tribunal has taken into consideration the oral deposition adduced by eye-witness Amrut Jamnadas Prajapati at Exh. 43, police complaint at Exh. 35, *panchanama* of the place of the

accidence at Exh. 36, Inquest Report of the victim at Exh. 37, post-mortem note of the victim at Exh. 38, and rightly held that the driver of the jeep was solely responsible for the accident in which the deceased died. The learned Advocate submitted that, in order to decide the quantum of dependency benefits, the learned Tribunal has placed reliance on the oral deposition of Shankarbhai Madhuji Prajapati at Exh. 24; the statement of accounts issued by Arvind International, a division of Arvind Mills Limited, at Exhs. 27 and 28; the letter by Arvind Mills Limited regarding the rate of labour charge dated 10-05-1995 at Mark 22/5; the certificate regarding labour contract of the victim at Exh. 29; the payment voucher at Exhs. 30 to 32; the Attendance Register of the labourers at Exh. 33; the Payment Registers of labourers at Exh. 34, and rightly calculated the monthly income of the deceased as Rs. 20,000/- per month. Even the potential earning capacity of the victim was taken into consideration by the learned Tribunal. After considering the same, 1/3 (one-third) amount from the said income was deducted, as the legal heirs were not

completely dependent on the victim. Therefore, considering the income of the deceased as Rs. 10,000/- per month, Rs. 1.20 Lakhs was considered as yearly loss of dependency. The age of the deceased on the date of the accident was 38 years and, therefore, multiple of 16 was made applicable by the learned Tribunal to the yearly loss of dependency of Rs. 1.20 Lakhs. Thus, the learned Tribunal has rightly awarded Rs. 19.22 Lakhs towards the loss of dependency. Further, an amount of Rs. 15,000/- was awarded for the loss of estate of deceased, Rs. 15,000/- as loss of consortium to the husband of the deceased, and an amount of Rs. 5,000/- towards the funeral expenses. Thus, the learned Tribunal awarded Rs. 19.55 Lakhs to the claimants and there is no need to interfere in the said order or award passed by the learned Tribunal and the appeal preferred by the Insurance Company is without any substance and, therefore, the same may be dismissed.

5. This Court has heard Mr. P. V. Nanavati, learned Advocate for the appellant – Insurance Company and Mr. J. B. Dastoor, learned Advocate for the respondents – original claimants, at length and

in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record of the case.

6. The deceased – Harshaben Sankarbhai Prajapati, who was travelling in authorickshaw No. GJ-2-U-2390, met with an accident on 20-10-1999 with the jeep-car bearing No. GJ-2-X-2184 and sustained serious injuries. The claimants, who are the legal representative of the deceased, preferred the Claim Petition and claimed compensation to the tune of Rs. 30 Lakhs from the Insurance Company with costs and interest at the rate of 18% from the date of the petition till realization.

7. On perusal of the judgment and award passed by the learned Tribunal, it becomes clear that the driver of the jeep was negligent in driving the vehicle. He had not taken necessary care and precaution while driving his vehicle, and as a result thereof, his jeep collided with the auto-rickshaw bearing No. GJ-2-U-2390. The deceased, who was travelling in the auto-rickshaw, sustained serious injuries, and ultimately, succumbed to the injuries

in the Civil Hospital at Gandhinagar. There is no dispute about the accident. After taking into consideration the oral deposition of the eye-witness Amrut Jamnadas Prajapati at Exh. 43, the complaint at Exh. 35, the panchnama at the place of incident at Exh. 36, the Inquest Report of the victim at Exh. 37 and the post-mortem note of victim at Exh. 38, the learned Tribunal has rightly came to the conclusion that the driver of the jeep was solely negligent in causing the accident which resulted in the death of deceased – Harshaben Shankarbhai Prajapati.

8. With regard to quantum of compensation, it has been vehemently submitted by the learned Advocate representing Insurance Company that the calculation of the income by the learned Tribunal is erroneous. However, on perusal of the judgment rendered by the Tribunal and documentary evidence produced and relied upon by the Tribunal, we are of considered view that the learned Tribunal has rightly taken into account the income of the deceased as Rs. 30,000/- per month. From the aforesaid income, the learned Tribunal sliced down the figure to Rs. 20,000/- per month, as there was no corroborating evidence with regard to the high income of the deceased. After coming to the

conclusion about the monthly income of Rs. 20,000/- per month, further amount of Rs. 10,000/- per month was also deducted by the Tribunal as the claimants cannot be said to be completely dependent on the deceased.

9. After considering the loss of dependency as Rs. 10,000/- per month, the yearly loss of dependency would come to Rs. 1.20 Lakhs. The age of the deceased at the time of her death in the vehicular accident was approximately 38 years and, therefore, if we apply reasonable multiplier of 10 to the yearly loss of dependency suffered by the claimants, then the same would come to Rs. 12 Lakhs. Hence, we award an amount of Rs. 12 Lakhs to the claimants towards the loss of dependency. We further award Rs. 15,000/- towards the loss of estate, Rs. 15,000/- towards the loss of consortium as well as Rs. 5,000/- towards obsequies expenses. Thus, taking into consideration various heads mentioned hereinabove, it would come to Rs. 12.35 Lakhs. In view of the foregoing discussion, the claimants (original opponents) would, thus, be entitled to claim compensation of Rs. 12.35 Lakhs from the Insurance Company with interest at the rate of 10% per annum

from the date of petition till realization.

10. With these observations, the appeal is partly allowed and the impugned order is modified to the extent as indicated hereinabove. Accordingly, the appeal stands disposed of. It will be open to the appellant – Insurance Company to make appropriate application before the learned Tribunal for claiming the difference amount in accordance with this judgment and order.

[A. R. DAVE, J.]

[H. B. ANTANI, J.]

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